In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-951

NUCLEUS OF CHICAGO HOMEOWNERS ASSOCIATION, ET AL., PETITIONERS

v.

CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

Petitioners contend that the Department of Housing and Urban Development failed to comply with the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 *et seq.*, 42 U.S.C. 4321 *et seq.*, by approving the construction of scattered-site low income housing in Chicago, Illinois, without considering the negative impact of certain "social charac-

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teristics" of low income families on middle-class and working-class communities.

This lawsuit is the result of a series of court decisions since 1969 holding that discriminatory housing patterns exist in Chicago and that low income housing at scattered sites in predominantly white neighborhoods is necessary to correct the imbalance.[1] Although 1500 apartments are scheduled as a result of these court orders, only 63 units have thus far been built. These apartments were given a special environmental clearance pursuant to HUD's NEPA regulations (Pet. App. A15).[2] The result of HUD's en-

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[1] *Gautreaux* v. *Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill.); *Gautreaux* v. *Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill.); *Gautreaux* v. *Chicago Housing Authority*, 436 F.2d 306 (C.A. 7), certiorari denied, 402 U.S. 922; *Gautreaux* v. *Romney*, 448 F.2d 731 (C.A. 7); *Grautreaux* v. *Chicago Housing Authority*, 342 F. Supp. 827 (N.D. Ill.), affirmed *sub nom. Gautreaux* v. *City of Chicago*, 480 F.2d 210 (C.A. 7); *Gautreaux* v. *Romney*, 332 F. Supp. 366 (N.D. Ill.), reversed, 457 F.2d 124 (C.A. 7); *Gautreaux* v. *Romney*, 363 F. Supp. 690 (N.D. Ill.), reversed, 503 F.2d 930, certiorari granted *sub nom. Hills* v. *Gautreaux*, 421 U.S. 962.

[2] HUD's environmental impact regulations (38 Fed. Reg. 19182 *et seq.*) require that projects containing less than 100 units receive "normal environmental clearance," a procedure whereby the department prepares a consistency check with HUD environmental policies and standards and a brief evaluation of environmental impact. 38 Fed. Reg. 19186. If no significant environmental impact is discovered, processing of the application may proceed, with the inclusion of appropriate conditions in the HUD contract or grant to minimize any adverse environmental impact that was found. 38 Fed. Reg. 19186. For projects with more than 100 units or for smaller

vironmental study was the issuance, in March 1973, of a negative impact statement, that is, a determination that a full-scale environmental impact statement was not necessary (Pet. App. A17-A18). The negative impact statement, which covered 156 pages, found no violation of sewer, transportation, noise, architectural or zoning standards as a result of the housing project. Moreover, HUD concluded that the project would not cause any strain on existing neighborhood services and facilities because of its scattered nature and small size (Pet. App. A22).

Petitioners, a group of Chicago community organizations and individuals residing near proposed scattered-site housing developments, brought this action

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projects involving significant or potentially significant environmental impact, "special environmental clearance" must be prepared. 38 Fed. Reg. 19186, 19188. This involves a detailed analysis of environmental policies and standards and an in-depth determination of the impact of the project on the environment. Based on this study, a decision is made whether a formal environmental impact statement is necessary. 38 Fed. Reg. 19186-19187.

In both normal and special clearance situations, the regulations require the department to give consideration to existing or potential "environmental controversy." In the case of a "major controversy" over "substantive environmental issues" the department is advised to consider a more comprehensive environmental study than would otherwise be required. 38 Fed. Reg. 19185.

The regulations encourage single environmental clearance where appropriate, *i.e.*, for comprehensive activities that are related geographically or as logical parts in a composite of contemplated actions (*e.g.*, subdivisions of a large development). When all significant issues cannot be anticipated or treated in connection with the comprehensive assessment, however, environmental clearances of more limited scope may be used. 38 Fed. Reg. 19185.

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against HUD and the Chicago Housing Association (CHA) to enjoin CHA from acquiring land and HUD from funding or approving acquisition of sites for low-income housing until an adequate environmental impact statement for all 1500 contemplated apartments had been prepared. Petitioners alleged that the suit was intended to "prevent the damage to neighborhood communities which will result if low-rent housing for low-income families is placed in working class and middle-class neighborhoods of Chicago," that low-income families who would reside in the proposed housing "possess certain social class characteristics which will and have been inimical and harmful to the legitimate interests of the [petitioners]," and that the issuance of a comprehensive environmental impact statement was necessary to consider these alleged negative characteristics (such as "a higher propensity toward criminal behavior and acts of physical violence * * *, a disregard for physical and aesthetic maintenance of real and personal property * * *, and a lower commitment to hard work for future-oriented goals") that would "significantly affect the quality of the human environment" (Complaint, pp. 11-12; Pet. App. A9, A16).

After a trial, the district court rejected petitioners' contentions, noting that the phrase "environmental impact" within the meaning of NEPA "cannot be reasonably construed to include a class of persons per se" (Pet. App. A11; 372 F. Supp. 147, 149). The court found that the evidence presented by petitioners' sociologists was "uncertain and unconvincing" (Pet. App. A12), that the prospective

tenants of public housing in Chicago would not significantly affect the environment, and that HUD's action in filing a negative impact statement was not in violation of NEPA (Pet. App. A12-A13).

The court of appeals affirmed (Pet. App. A14-A24; 524 F.2d 225). The Seventh Circuit unanimously concluded that a single study for all 1500 proposed apartments was neither warranted by the facts nor mandated by the applicable regulations, that HUD had adequately investigated the social and physical impact of the housing on the community and had sufficiently considered alternatives in its site selection process, and that the department's determination not to file a full environmental impact statement was not arbitrary or capricious.

1. The court of appeals correctly concluded that HUD acted in compliance with NEPA and with all applicable regulations. Although petitioners contend (Pet. 24) that HUD's decision violated guidelines of the Council on Environmental Quality, especially the requirement that an impact statement be prepared to cover all major actions that are likely to be "highly controversial," 40 C.F.R. 1500.6(a), the court below correctly ruled that a controversy over the social characteristics of low income families is not the type contemplated by NEPA or these guidelines (Pet. App. A21). See *Maryland-National Capital Park and Planning Commission* v. *United States Postal Service*, 487 F.2d 1029, 1037 (C.A. D.C.). In addition, not only do CEQ guidelines not bind the executive branch, see *Hiram Clarke Civic Club, Inc.*

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v. *Lynn*, 476 F.2d 421, 424 (C.A. 5), but also the guideline upon which petitioners rely was not promulgated until August 1973, several months after the filing of the negative impact statement in this case.

Moreover, contrary to petitioners' allegations (Pet. 24-25), neither the guidelines of CEQ nor the regulations of HUD mandate a single impact statement covering an entire project, although comprehensive environmental evaluation is encouraged. Consideration must only be given to whether all significant issues can be adequately treated without a comprehensive analysis. 38 Fed. Reg. 19185. As the court of appeals noted (Pet. App. A20), HUD did not abuse its discretion in not issuing a comprehensive impact statement covering all proposed scattered-site housing in Chicago, since many of those sites had not even been approved at the time that the original environmental clearance was performed and each site by design was to be in a separate neighborhood.

2. The decision below conflicts with neither *Shannon* v. *United States Department of Housing and Urban Development*, 436 F.2d 809 (C.A. 3), nor *Otero* v. *New York City Housing Authority*, 484 F.2d 1122 (C.A. 2). In each of those cases, which did not involve claims under NEPA, the court held that the government was required to consider the racial composition of potential new housing residents in order to prevent an increase in segregation and to promote the statutory goal of integration. Similarly, in *Trinity Episcopal School Corporation* v. *Romney*, 523 F.2d 88

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(C.A. 2), the court emphasized that the proposed plan of concentrating all minority residents in one block would substantially impede efforts at integration. Thus, those cases concerned situations in which it appeared that federally-sponsored housing would so concentrate the number of minority residents in one area that the community would only be further segregated in contravention of the statutory mandate. Here, however, it is undisputed that the use of scattered-site housing dispersed throughout the City of Chicago precludes the formation of pocket ghettos and that no housing units have been proposed for areas that already have a significant number of minority residents. Furthermore, the housing in issue here was ordered by the courts for the expressed purpose of achieving racial integration.[3]

3. Petitioners claim (Pet. 25-27) that the court of appeals overstepped its proper role. This lawsuit challenged HUD's determination that its 156-page negative impact statement fulfilled the requirements of NEPA and that a full environmental impact statement covering all of the proposed scattered-site housing projects in Chicago was unnecessary. The Seventh Circuit's conclusion that HUD's negative im-

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[3] Moreover, regardless of whether these are the kinds of considerations that must be taken into account under NEPA, it is clear that in this case HUD did "consider the impact of the scattered-site housing on the social fabric of the recipient communities" (Pet. App. A21), although the department may not have relied on the expert studies that petitioners apparently believe are essential to the resolution of that question.

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pact statement was sufficient is fully supported by the record.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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